

Application No. 10/020,922

Art Unit 1772

September 22, 2003

Supplemental Reply to Office Action of March 28, 2003

SUPPLEMENTAL REMARKS

Applicants respectfully request the Examiner to reconsider the present application in view of the foregoing amendments to the claims.

In the present application, claims 1-20 are pending. Claims 4, 6-8 and 10-20 have been amended. No new matter has been added by way of these amendments, because each amendment is supported by the present specification. For example, the amendment to claim 4 is supported by the present specification at pages 4-5. The amendments to claims 6 and 7 correct the dependencies thereof due to the amendments to claim 4 (claim 5 depends on claim 4). Claims 8, 12 and 17 have been amended into independent form, and supported by the present specification at pages 4-5. The amendments to claims 10, 11, 13-16 and 18-20 are editorial in nature, wherein many parts of the specification support these amendments. For instance, the amendment to claim 11 corrects a typographical error, whereby the specification at page 7, lines 13-14 supports this amendment. As another example, claims 18-20 are amended for antecedent basis purposes. These amendments are for purposes of clarification and are not narrowing in patentable scope. Thus, Applicants reserve the right to pursue any equivalents of the features of the presently pending claims.

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Based upon the above considerations, entry of the present amendment is respectfully requested.

In view of the following supplemental remarks, Applicants respectfully request that the Examiner withdraw all objections and rejections and allow the currently pending claims.

Objections to Abstract & Specification

The abstract of the disclosure stands objected to by the Examiner because the abstract does not mention the package of claims 4-7 or the cup with cover of claim 8. The specification also stands objected to for the reasons set forth in paragraph 2 of the Office Action (at page 2). Applicants respectfully refer the Examiner to the Reply of July 28, 2003, which fully addresses these issues. Withdrawal of these objections is respectfully requested.

Claim Objections

Claim 2 stands objected to for the reasons set forth in paragraph 3 of the Office Action. Again, Applicants respectfully refer the Examiner to the July 28 Reply, which fully addresses this issue, and request withdrawal of this objection.

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Issues Under 35 U.S.C. 112, First Paragraph

Claims 5 and 8 stand rejected under 35 U.S.C. § 112, first paragraph, for the reasons set forth in paragraphs 4-5 of the Office Action. This rejection is respectfully traversed for the reasons set forth in Applicants' July 28 Reply, wherein this reply fully addresses this rejection. Reconsideration and withdrawal thereof are requested.

Issues Under 35 U.S.C. 112, Second Paragraph

Claims 1 and 3-8 stand rejected under 35 U.S.C. § 112, second paragraph, for the reasons set forth in paragraphs 6-7 of the Office Action. Applicants respectfully refer the Examiner to the Reply of July 28, 2003, wherein this Reply fully addresses this rejection. Applicants note that the traverse regarding "hermetically sealed package" is with respect to all pending claims, including claims 13-20. Accordingly, withdrawal of this rejection is respectfully requested.

Issues Under 35 U.S.C. 102(b)/103(a)

Claims 1, 3, 4 and 7 stand rejected under 35 U.S.C. § 102(b) over the Yamamoto et al. '861 reference (U.S. Patent No. 5,741,861) for the reasons set forth in paragraph 9 of the Office Action. Also,

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claims 5 and 6 stand rejected under 35 U.S.C. § 103(a) over the Yamamoto et al. '861 reference (U.S. Patent No. 5,741,861) for the reasons set forth in paragraph 11 of the Office Action. Finally, claim 8 stands rejected under 35 U.S.C. § 103(a) over the Yamamoto et al. '861 reference (U.S. Patent No. 5,741,861) in view of U.S. Patent 5,281,453 to Yamada et al. for the reasons set forth in paragraph 12 of the Office Action. These rejections are respectfully traversed for the reasons set for Applicants' July 28th Reply. Applicants add the following remarks.

Yamamoto '861 discloses a resin composition for laminate, wherein the resin composition may be used as a sealant for a sandwich laminate having a base and a sealant, and the base may be various types of materials.

However, Yamamoto '861 fails to disclose all features of the instantly pending claims. For example, there is no disclosure of all features of claims 1 and 3 of the present application. For example, the invention of claim 1 and all dependent claims thereon are distinguished from Yamamoto '861 at least in the recitation that "the ethylene/ α -olefin copolymer (B) is contained in an amount of less than 50% by weight." In Yamamoto '861 the content of (B) is 50%. Thus, Applicants submit that because "a claim is anticipated only if each and every element as set forth in the claim is found, either

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expressly or inherently described, in a single prior art reference," the cited Yamamoto '861 reference cannot be a basis for a rejection under § 102(b). See *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Reconsideration and withdrawal of the § 102 rejection is respectfully requested.

Further, the cited Yamamoto '861 reference fails to disclose any control of the sealing strength that depends on the kind of base material. In fact, polypropylene (as instantly claimed) is not used as a base material in the Examples of the Yamamoto '361 reference. Thus, Applicants respectfully request reconsideration of the patentability of all presently pending claims in view of the disclosure of the Yamamoto '861 reference.

In contrast to the teachings of the Yamamoto '861 reference, the sealant of the present invention utilizes polypropylene. With the present invention, when the sealant is used for polypropylene, the present invention achieves excellent sealability and can be easily opened. Accordingly, an easily opened hermetically sealed package can be obtained by using the sealant of the present invention. Overall, Yamamoto '861 is deficient in disclosing an easily openable hermetically sealed package, as well as any control of the sealing strength.

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Generally, when polypropylene is used as an adherent, the same kind of polypropylene is used as a sealant material. However, because the adhesive strength between polypropylene and polyethylene is typically weak, some additional processing or adhesive layer between the polypropylene and polyethylene is needed to be able to use polyethylene as a sealant with polypropylene. Thus, the present invention unexpectedly achieves better sealing properties, and consideration of these unexpected properties is respectfully requested.

Assuming, *arguendo*, the above-mentioned arguments are not sufficient for the Examiner to withdraw this rejection, Applicants respectfully refer the Examiner to the additional comments as set forth in the July 28th Reply.

Applicants note the Examiner's comments regarding the scope of "consisting essentially of" (at page 7, lines 6-8 of the Office Action). Applicants respectfully submit that by reciting "consisting essentially of," the scope of the claimed invention will necessarily includes the listed ingredients and is open to unlisted ingredients that do not materially affect the basic and novel properties of the invention. See *PPG Indus. Inc.*; see also *Water Techs. Corp. v. Calco, Ltd.*, 850 F.2d 660, 7 USPQ2d 1097 (Fed. Cir. 1988); *Atlas Powder Co. v. E.I. du Pont & Co.*, 750 F.2d 1569, 224 USPQ 409 (Fed.

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Cir. 1984). Based on the above remarks, Applicants respectfully request reconsideration of the present invention and withdrawal of all objections and rejections.

Conclusion

A full and complete response has been made to all issues as cited in the Office Action. Applicants have taken substantial steps in efforts to advance prosecution of the present application. Thus, Applicants respectfully request that the Examiner pass the application to issue.

In Applicants' previous Reply of July 28, 2003, Applicants petitioned for one (1) month extension of time pursuant to 37 C.F.R. §§ 1.17 and 1.136(a) in connection with the present application, and the required fee of \$110.00 was attached hereto. Because the July 28th Reply was fully responsive to the outstanding Office Action, Applicants submit that no additional extensions of time are needed for the present Supplemental Reply.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Marc S. Weiner (Reg. No. 32,181) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

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If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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By 
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